(2)

No. 08-1289

Supreme Court, U.S.
FILED
JUL 7 - 2009
OFFICE OF THE CLERK

In the
Supreme Court of the United States

LU SORO d/b/a CITIGROUP, *Petitioner,*

versus

CITIGROUP,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
For The Eleventh Circuit

PETITION FOR REHEARING

Luis Soro President
CITICORP MORTGAGE CO. INC.,
INVENTOR, CREATOR, DESIGNER.
FABRICATOR, DEVELOPER,
CULTIVATOR, AND THE FIRST
USER OWNER SINCE JANUARY 05,
1976 THE TRADENAME CITIGROUP
MORTGAGE COMPANY
P,O, Box 398142
Miami Beach, Fl. 33239-8142

(786) 512-2828
(305) 531-4000

PARTIES TO THE PROCEEDING

The following, and no others, are parties to the instant proceedings:

Petitioner Lu Soro, an individual, and the inventor, creator, developer, and the original first user owner of the trademark Citigroup since January 05, 1976 – used in interstate use since the same date.

Respondent is believed to be a Delaware corporation that hijacked Petitioner's trademark on October 8, 1998, and on November 21, 2000, was fraudulently registered at the trademark office. This Petitioner has been to every court in the country to have this registration cancelled.

TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDING.....i

TABLE OF CONTENTS..... i i

TABLE OF AUTHORITIES..... i i i

PETITON FOR REHEARING ...1

I. CITATIONS TO OPINIONS BELOW....1

II. JURISDICTIONAL STATEMENT.....2

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....4

IV. STATEMENT OF THE CASE.....5

A. Summary of Facts.....5
B. The Challenged Laws.....5

V. REASONS FOR GRANTING THE PETITION FOR REHEARING 10

TABLE OF AUTHORITIES

	Page
Continental Bank Corp v. The State of Florida Supreme Court 87-1955	11
Delaware & H. Canal Co. v. Clark 13 Wall. 311, 322, 20 L.ed. 681, 583	10,11,13, 17
Fidelity Bond & Mortgage Co. v. Fidelity Bond & Mortgage Co. Texas	10,19
First Southern Federal Savings First Southern Savings	10,19
Mclean v. Fleming 96 U.S. 245, 254, 24 L.2d. 828, 832	11,13
Moseley v. V Secret Catalogue 123 S. Ct. 1115 (Mar. 04, 2003)	10,12,18
Sun Banks of Florida Inc., v. Sun Federal Savings & Loan 651 F.2d. 331 (5th Cir. 1981)	3,10,19
Surf Club v. Tatem Surf Club Inc., 151 Fla. 405, 10 So. 2d. 554 (1942)	11

PETITION FOR REHEARING

Petitioner Respectfully seeks a Rehearing to review this Court's opinion of June 22, 2009 that Denied Certiorari. Petitioner has used the mark Citigroup for over (33) thirty three years in interstate commerce and it will be a great injustice to require the Petitioner to change his tradename after he has made the mark Citigroup famous, through interstate commerce. This will require this Petitioner to start all over again and lose (33) thirty three years of goodwill in the mark Citigroup, due to an insolvent company that hijacked the mark on October 08, 1998, and will not be in business very much longer.

Petitioner has not had a fair trial to protect his (33) thirty three year old mark in front of a court of law, as required by the constituional provisions of the United States of America.

II. JURISDICTIONAL STATEMENT

The District Court for the Southern District of Florida had subject matter

jurisdiction pursuant to Section 43 (a) (1) of the Lanham act of 1946, 15 U.S.C.

1125 (a)(1) unfair competition under Florida common law, and injury to business reputation under Florida Statutes 495. 151, this being an action for dilatory relief due to the facts Respondent hijacked Petitioner's thirty three year old trade name and Fraudulently registered it at the U.S. Patent and Trademark Office.

On July 17, 2007, without any type of oral presentation the District Court closed the case after the Respondent filed a motion to dismiss the case. Every rule in trademark law and first use of a trademark was violated by the District Court when the judge did not hear any argument. [App. D]

Petitioner Lu Soro d/b/a Citigroup since 1976, appealed the District Court's order to the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. 1291 that had jurisdiction over all final decisions of the district courts of the United States.

A timely Motion for Reconsideration was filed with the District Court to point out that the Petitioner was the inventor, creator, and original first user owner of the mark Citigroup,

and a Federal registration is not needed to have and establish rights to a particular mark. It was also filed to point out that a right to a particular mark grows out of use and not its mere adoption. If you do not use a name, you do not have any rights to that particular name. Wal-Mart – Wal-greens, Office Depot-Office Max. Super Man – Super Dog – Super Cuts – Super glue, Goodyear tires – Goodrich tires, Blackberry, Blackman, Blackboard, Citigrada – citijunk-citigroup-citilab, Bigfoot – bigfish – bigwheel – bigfive - big brother - bighorn, Hawaiian tropic – Hawaiian airlines – Hawaiian telecom-Hawaiian time.

Every book in the library written in English contains the same thing: words in different combinations that use the same 26 letters. Those same 26 letters will be used to create and recreate words, some of them new, without any meaning until one is given. A user of a similar name cannot come 20 years later and start to use a name of another. Sun Bank-Sun Federal Bank. Sun America Bank – Sun Mortgage Bank. General Motors-General Tire-General Electric-General Store.

III. CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution, Section 1:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

IV. STATEMENT OF THE CASE

A. Summary of Facts

Petitioner Lu Soro is the registered and licensed president and sole shareholder of the licensed and registered company Citicorp Mortgage Company Inc. since it was incorporated on July 07, 1981, a licensed mortgage broker and owner since it was formed on December 15, 1979.

Petitioner Lu Soro is the creator, inventor and the original first user owner of Citigroup Mortgage Company since it was manufactured on January 05, 1976 and has never been incorporated to this date.

Petitioner Lu Soro made his first mortgage loan over (40) forty years ago on March 1965 and has made over 15,000 loans since, over 11,000 mortgage loans using the Citigroup tradename since 1976 throughout the world.

The Eleventh Circuit Court of Appeals affirmed the opinion of the lower court, and did not take into consideration the facts that the Trademark Office issued a separate registration for Citigroup on 11-21-2000.

The tradename Citigroup invented and cultivated by Lu Soro that did not mean anything until I gave it a meaning is as close to Respondent's mark Citicorp as Wal-Mart is to Wal-greens, as Goodyear tires is to Goodrich tires, as General Motors is to General tires and to General Electric, General Mills, General Rental, General Nutrition, as American Airlines is to American Express, American Cargo Express, American Red Cross, American Coin Exchange, American Cancer Society, and American Heart Association.

The name citigrada and citigrade are found in the dictionary that have nothing to do with Respondent or Petitioner. The Petitioner has found over (3000) three thousand "citi" users since 1976 all over the United States and beyond, that have nothing to do with the Respondent or Petitioner and the lawyer for the Respondent agrees with the Petitioner that "citi use is not new." Petitioner has innumerable (∞) business owners that use the mark cities, city, cit in their tradenames.

The word city or cities is a noun describing a place or a thing. Phonetically, cities is the plural of city, and the fact that we have traditionally tolerated a greater degree of resemblance among the names of financial institutions only reinforces this conclusion.

This Supreme Court of the United States recognized over (70) seventy years ago that there is no such thing as a property in a trademark except as a right appurtenant to an established business or trade in connection with which the mark is employed. Use it or lose it should be a guiding principle for trademark owners, and the right to a particular mark grows out of use, not its mere adoption.

The Honorable Joan A. Leanard wrote in her opinion "as it is undisputed that Soro has been using the name Citigroup name since at least the mid 1990's" based on case facts, meaning 1994-1995, giving Lu Soro "FIRST USE." The district court misapprehended the law and that is reviewed under the clearly erroneous standard of Fed. R. Civ. P. 52 (e).

Respondent's own attorney in a signed declaration and after being warned that willful false statements and the like so made were punishable by fine or imprisonment or both under U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, Stated on June 15, 2000 "the mark was first used on the goods or services anywhere at least as early as April 6, 1998 and in commerce at least as early as October 8, 1998." Signed by Anne Moses, Assistant Secretary.

The Eleventh Circuit rejected Lu Soro's repeated claims that he was the first user of the mark "Citigroup" and had a right to the term. They also wrote "these contentions are not relevant to the issue of this case." First use is very relevant to a trademark case because first use or senior use gives ultimate rights to the use of that particular mark. Use is not only essential to establishing rights in a particular mark, continued use is essential to preserving rights in a mark. No Use, No Rights.

In determining likelihood of confusion in service marks, similarity of appearance is determined on the basis of the total effect of the designation rather than on a comparison of the individual features, between service marks, and a federal registration is not needed for a service mark to establish rights.

Petitioner has twenty two (22) years prior use of his invented tradename before Respondent hijacked the mark Citigroup on October 8, 1998.

Respondent is confused, thinking they have a monopoly on the use of city, when in fact this Petitioner has found over (3000) three thousand "citi" users worldwide that are not associated or have anything to do with Respondent. The evidence is very clear and

without any doubt that the marks Citigroup and Citicorp are not even closely related or even associated with each other. That is why the Patent and Trademark Office issued a different registration for Citigroup on November 21, 2000, than the registration they had for Citicorp. They have admitted the two marks are different, and the Trademark office agreed with them. The two marks are world apart. Wal-mart, Wal-greens, Microsoft, Microhard, Microtel, Microsharp, Office Depot, Office Max, Office Supply, Goodyear Tires, Goodrich Tires, Goodman Tires, Gooduse Tires.

The Respondent ascertained that the two marks are not confusingly similar and requires a separate registration, the Respondent admits to not doing any trademark search, for the mark Citigroup, and that is the reason for this law suit: for damages, and to cancel the registration. The prior judgment and the subsequent registration of a totally different mark are not related and far from identical. This petitioner has found a company called Citgroup and is placed next to Respondent.

REASONS FOR GRANTING THE PETITON FOR REHEARING

Petitioner has not had a fair trial to protect his (33) thirty three year old mark in front of a court of law, as required by the constituional provisions of the United States of America.

Petitioner Respectfully seeks a Rehearing to review this Court's opinion of June 22, 2009 that Denied Certiorari. Petitioner has used the mark Citigroup for over (33) thirty three years in interstate commerce and it will be a great injustice. Sun Banks v. Sun Federal 651 F.2. 331 (5th Cir. 1981), First Southern Federal v. First Southern Savings 614 F. 2d. 71 (5th Cir. 1980), Fidelity Bond v. Fidelity Bond (37 F. 2d 99 5th Cir. 1930). Del v. Clark.

The Respondent, which is an insolvent shell of a financial institution and is on U.S. Government life support at taxpayers' expense and will be nationalized any day, should not be permitted to hijack this name. Home Savings v.

Home Savings of America. The lower court judge agree with this Petitioner he was the first Citigroup user. Continental Bank Corp v. The State of Florida Supreme Court 87-1955

A THIS SUPREME COURT OF THE UNITED STATES RECOGNIZED THERE IS NO SUCH THING AS PROPERTY IN A TRADENAME OR TRADEMARK EXCEPT AS A RIGHT APPURTENANT TO AN ESTABLISHED BUSINESS OR TRADE IN CONNECTION WITH WHICH THE MARK IS EMPLOYED

Use it or lose it should be a guiding principle for tradename or trademark users or owners. Delaware & H. Canal Co. v. Clark, 13 Wall. 311, 322, 20L. ed 581, 583; Mcleanv. Fleaming, 96 U.S. 245, 254, 241. ed. 828, 832. This Supreme Court of the United States recognized over (70) seventy years ago there is no such thing as property in a trademark except as a right appurtenant to an established business or trade in connection with which the mark is employed. Surf Club v. Tatem Surf Club Inc.,

Respondent cannot possibly have any rights to the name Petitioner invented, created, manufactured, developed, fabricated, and has cultivated since January 05, 1976. The right to a particular mark grows out of use, not its mere

Adoption. Respondent has Fraudulently adopted petitioner's tradename and this Court should order them to cease and desist from using the name "Citigroup" immediately and destroy all documents bearing the Citigroup name and pay Petitioner treble profits since October 08, 1998. Moseley v. V. Secret Catalogue Inc., 123 S. Ct. 1115 (Mar. 04, 2003).

The courts below in this case have completely disregarded the entire set of issues on First Amendment procted activity to effectively prohibit an entire category of speech in a public forum, first use of and invented and created tradename, and all of the factors presented in this case clearly favor the Plaintiff, based on common law competition and statutory law, and injury to business reputation as the Respondent is insolvent and will close.

Although the decision is unpublished, the Eleventh Circuit should not be allowed to use the mechanism of an unpublished decision to completely disregard the well established principles of the First Amendment law, and the First User or inventor or creation of a tradename, that has been used in interstate commerce and trade since January 5, 1976.

B A FEDERAL REGISTRATION IS NOT NEEDED FOR A MARK TO ESTABLISH RIGHTS TO A PARTICULAR MARK

Appellant contended on appeal that because he was the inventor, creator, manufacturer, designer, fabricator, cultivator, and the original first user owner of CITIGROUP Mortgage Company since January 5, 1976 that he had ultimate rights to the term "Citigroup." Appellant also contended that not even with gargantuan speculation, would he have been able to predict in 1976, the Respondent would start using a different name in 1998 that they had never used before. In Trademark law, a company or person must have continuous use of the mark and the rights to a particular mark grow out of use not its adoption. Home Savings of America, also Continental Bank Corp., v. The State of Florida 87-1955, then on October 8, 1998, the Respondent hijacked Petitioner's trademark.

Use it or lose it should be a guiding principle for tradename or trademark users or owners. Delaware & H. Canal Co. v. Clark, 13 Wall. 311, 322, 20L.ed 581, 583; Mclean v Fleaming, 96 U.S. 245, 254, 241.ed. 828, 832. This Supreme Court of the United States

recognized over (70) seventy years ago there is no such thing as property in a trademark except as a right appurtenant to an established business or trade in connection with which the mark is employed.

Respondent cannot possibly have any rights to the name Petitioner invented, created, manufactured, developed, fabricated, and has cultivated since January 05, 1976. The right to a particular mark grows out of use, not its mere Adoption. Respondent has Fraudulently adopted Petitioner's tradename and this Court should order them to cease and desist from using the name "Citigroup" immediately and destroy all documents.

First User has ultimate rights to a name and reasonable people know the difference between Wal-Mart and Wal-greens, Office Depot and Office Max, General Motors and General Electric and General Tire etc.

Respondent cannot possibly have any right to a name they started using over twenty two (22) years after Petitioner invented and created his tradename that has been used in international trade since January 5, 1976.

Most Names or tradenames are not registered, in fact an attorney from the

trademark office wrote in a published newspaper "If every name in America was trademarked we would need twenty buildings like these." He was referring to the twin 14 story towers in Crystal City, Va. That is why First user has ultimate rights no matter who the litigants are.

C IN TRADEMARK LAW THE FIRST USER HAS ULTIMATE RIGHTS TO THAT TRADENAME WHETHER IT IS REGISTERED WITH THE TRADEMARK OFFICE OR NOT.

The law of trademarks is but a broader law of unfair competition; the rights to a particular mark grows out of its use, not its mere adoption; and is not the subject of property except in the connection with an existing business. The Respondent invaded Petitioner's home state nine years after first use of Citigroup by the Petitioner, and started using his name twenty two (22) years after its creation and use in international trade. As part of the events that have occurred since October 8, 1998, Respondent has also hijacked part of Petitioner's Logo, the Crescent moon (⊂) that now Respondent uses and claim to use it as an umbrella.

VI. CONCLUSION

Petitioner contends that in a number of ways, the Eleventh Circuit's opinion in this case conflicts with the precedent set by this Court and that of the other circuits, creating a decision that is fundamentally wrong and that severely chills the rights of those who engaged in what has consistently been held to be First Amendment protection and protected speech activity and the right of first use of an invented, created, and the cultivation of a (33) thirty three year old tradename, and improperly upholds a law that substantially restricts First Amendment Protected activity in public forums.

If the Respondent requested from the Trademark Office a different registration number for the mark Citigroup from the mark they had, and the Trademark Office upon examination of the application and the mark granted a different registration number for Citigroup than the one they had for Citicorp, the only conclusion that a reasonable person can determine is that both of the marks in questions do not have any conflict, despite any conclusion the lower court might have had for whatever reason. This Court must order the Trademark Office to cancel registration number 2406753 issued November 21, 2000, and award Petitioner all the damages he has.

BEST AVAILABLE COPY

RESPECTFULLY SUBMITTED,

Luis Soro, President
CITICORP MORTGAGE CO., INC.,
INVENTOR, CREATOR, DESIGNER,
FABRICATOR, DEVELOPER,
MANUFACTURER, CULTIVATOR, AND
THE ORIGINAL FIRST USER OWNER
SINCE JANUARY 05, 1976 OF THE
TRADENAME CITIGROUP MORTGAGE
COMPANY

P.O. BOX 398142
MIAMI BEACH, FL 33239-8142

(786) 512-2828
(305) 531-4000

Exhibit A

EXAMPLES OF MASSIVE "CITI" USE.

Respondent's statement of Use to The United States Patent and Trademark Office April 18, 2000, declaring first use of Citigroup as early as April 6, 1998, and in commerce at least as early as October 8, 1998, deposited "Express Mailing Label No. TB319294228 U.S. June 15, 2000

Exhibit A

CITI OF BALTIMORE, CITI KNITS, CITI LOC, ADVANCE CITI MORTGAGE CO., LIBERTY CITI LOCK & KEY, CITI TANNING SALON, MAGIC CITI CARPET, FLORIDA CITI DINNER, BARRICADE CITI, CITI TECHNOLOGIES, CITIVIEW APT., CITITEAM, LIBERTY CITI SHOE REPAIR, CITI RECORDS & TAPES CITIDANCE, MAGIC CITI MOTORS, CITI MORTGAGE BANK OHIO, CITICARE CENTER & REHAB, CITI NETWORK SPECIALISTS, CITI INFORMATION CENTER, CITI GLOBAL CENTER, CITI FORMAL WEAR, CITI ROCK INDUSTRIES, CITI WASTE GROUP, CITIBYTE, CITI ENTERTAINMENT, CITI PAPER SUPPLY, CITI ROOF REPAIR, CITI RIMS, CITI MED GROUP, MAGIC CITI LOCK & KEY, CITI HEALTH CENTER, GOLD CITI, CITI 411, CITI SHEET METAL, CITI LENDING COMPANY, CITI LIQUIDATORS, CITISTAR FINANCIAL GROPU, CITI STATE HOME REPAIR, CITI VIEW DELI, GOLDEN CITI CASH JEWELERY, CITI PRODUCTS, ALL CITI MORTGAGE COMPANY, CITI INFORMATION ANALYSIS, CITI INSPECTION SERVICE, CITI HAIR SALON, NEW CITI JEWELERS, CITI MORTGAGE INVESTMENT, CITI

PALM & CARD READING, CITI AIR CONDITIONING SERVICE, CITI ZONE FLOWER SHOP, CITI POINTE, CITI COMMUNICATION SERVICE. CITIFACTORS FINANCIAL GROUP. MURAL CITI, MAGIC CITI MOVERS, CITI DELIVERY SERVICE, CITISTATE AUTO PARTS, CITITRACK, CITI EXOTIC DANCERS, CITI CASKET CO. CITIMOBILE HOME PARK, CITI BOAT REPAIR, CITI SOAP COMPANY, CITI OXYGEN REFILLS, CITI BAY, CITICRUISER.

CITI INTEGRATING CO. CITISHIPPING CO., CITI COMPONENTS, CITI SCIENTIFIC SUPPLIES, CITI EMBROIDERY, MAGIC CITI TATTOO, 1ST CITI, BALLOON CITI, CITIOPTICAL, CITIMETER CO., EDMERAL CITI JEWELERY, VINCITI NETWORKS. HUB CAP CITI, CITI GRAPHIX GROUP, CITI NOTIONS, CITI DATA RECOVERY. CITI TOOL COMPANY, CITIHEAT & AIR, MODEL CITI, BIG CITI MEN'S CLOTHING, CITI SICKROOM SUPPLY, CITI MASSAGE SALON, MAGIC CITI PAWN. ANGELCITI.COM, CITI MODELING CENTER, CITI EXPRESS, CITI SPRINKLERS, CITI MATERNITY SHOP. CITIPANELING DISTRIBUTORS. CITISPACES. CITITEAM, CITIHYTEC. CITIWALK, TELECITI CITIMAS. MAPCITI.. AUTOCITI. CITIBEST.

CITICOLORS, CITIWELDING, CITISOD, TICKETCITI, PAPERCITI, SOUNDCITI, BOATCITI, CITIPRINT, CITISTATE AUTO GLASS, CITIZONE GRILL, CITIAUTO GLASS, CITIUNIFORMS, CITIBOX COMPANY, CITISTONE, CITIPLANT FARM, CITI TENNIS CENTER, CITICHEMICALS, CITIBOAT CHARTER, CITIWIG STUDIO, CITIBAG COMPANY, CITIFORTUNE TELLER, CITI PACKINGCOMPANY, CITIPRODUCTS, CITIDEMOLTION, CITI EXCAVATIONS, CITICONSTRUCTION, CITIEXCHANGE, CITIZONE RADIO, CITIHOME SECURITY, CITICORNER SPORTS, CITITUX GALLERY, CITIEDGE DELI, CITISWINGERS, CITIEDGE

This Plaintiff has hundreds more citi users found since 1976. A total of 3027 citi users found, millions more uses cities, city, cit.

APPENDIX E

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	*Citicorp
Serial No.:	*75462565
Mark:	*Citigroup
Class:	*36
Allowed:	April 18, 2000
Our Ref:	*14345/1280

STATEMENT OF USE

Box ITU
FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Applicant is the owner of the mark sought to be registered and has adopted and is now using in commerce the above mark on or in connection with all goods and/or services identified in the Notice of Allowance for the application and request that said mark be registered in the United States Patent and Trademark Office on the Principle Register established by the Act of July 5, 1946.

The mark was first used on the goods or services anywhere at least as early as April 6, 1998 and in commerce at least as early as October 8, 1998.

One specimen showing the mark as currently used in commerce is presented herewith.

"Express Mail" mailing label No. EB319294228 US Date of Deposit June 15, 2000. I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Delayne Bell

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the owner; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true. By: Anne Moses